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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**Special Bulletin on
“The relations between the constitutional courts
and the other national courts,
including the interference in this area
of the action of the European courts”**

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**Questionnaire sent by the Court of arbitration of Belgium
Presidence of the XIIth Conference of the European Constitutional Courts**

Reference Document

I. The constitutional court, the other courts and the constitutionality review

A. The judicial organization of the State

1. The judicial system

1. Please give a brief presentation, using diagrams if necessary, of the different courts that exist in your State and the organization of their powers. This concerns the ordinary courts as well as the administrative or other courts, the courts of the Federal State as well as the courts of the federated States.

2. The constitutional court

2. What is the place of the constitutional court in the judicial organization of the State? If it is part of the judiciary, what is its status within the judiciary?

B. The respective jurisdictions of the constitutional court and the other courts in the area of constitutionality review

1. Review of laws and other acts

§1 Type of review

3. What acts (of domestic law and international law) are reviewed by the constitutional court in relation to the higher standards that are the Constitution, the principles of constitutional value and the provisions of international law?

4. Is this competence exclusive? If not, which are the other competent courts in this area? How about the other acts and decisions?

5. Is the review carried out by the constitutional court a prior or subsequent review?

6. Is the review carried out by the constitutional court an abstract or a concrete review?

§2 Referral to the constitutional court

a. Types of referral

7. How can the constitutional court be accessed (action for annulment, preliminary question, constitutional appeal, etc.)? How many cases have there been for each type of referral?

b. Actions for annulment

8. Does direct recourse exist to the constitutional court against statutes? And against other regulations and acts?
9. Who can bring such actions and within what time limit?
10. Can the constitutional court suspend statutes or other regulations and acts?

c. Preliminary issues – plea of unconstitutionality

Who can refer cases to the constitutional court?

11. Which courts can refer cases to the constitutional court? If any court can put a preliminary question, does that mean that a broad or a restrictive interpretation is given to the notion of ‘court’?
12. Are the courts obliged to put the question?
13. Is it possible to oppose, by a procedure of objection, opposition or recourse, the submission of all or part of a case to the constitutional court by a decision of referral? If so, who can initiate this procedure and how does it proceed? What are the consequences?
14. What is the procedure for referral to the constitutional court? What is the role of the parties in drawing up the preliminary question? Can the preliminary question be raised *ex officio*? In that case, are the discussions on the question reopened?
15. Do the courts that put the question rule on the constitutionality or unconstitutionality of the regulation at issue?

Screening

16. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (nonsuit, quick reply, demurrer, evident unfoundedness, identity or similarity of questions which the constitutional court has already answered)? What is the proportion of cases screened in this way?

Scope of referral of the constitutional court

17. What is the import of the considerations of unconstitutionality given by the court that puts the question (court *a quo*)? Must the constitutional court take these considerations into account or can it ignore them? Can it raise, *ex officio* or at the request of the parties, the arguments of unconstitutionality not envisaged by the court *a quo* or is it restricted by the decision of referral? Can the constitutional court review regulations not intended by the preliminary question yet linked thereto?
18. Are all aspects, both in law and in fact, of the action pending before the court *a quo* referred to the constitutional court?

Relevance of the question

19. Can the constitutional court dismiss the question on the grounds that it is not useful to the settlement of the action brought before the court *a quo*?

Interpretation of the question

20. Can the constitutional court reformulate the question in order to make it clearer and to define the constitutional debate better? If so, what use is made of this option?

Interpretation of the reviewed regulation

21. Must the constitutional court adhere to the interpretation of the reviewed regulation given by the court *a quo*?

Jus superveniens

22. What is the impact of a legislative amendment to the challenged regulation subsequent to the decision of referral?

Parties

23. Can the parties before the court *a quo* or third parties (individuals, institutions, other courts, etc.) participate (voluntarily or compulsorily) in the procedure before the constitutional court? If so, in what way? How are they informed of the procedure before the constitutional court? Can one intervene before the constitutional court on the mere grounds of being a party before a court deciding on merits in an action similar to the one that led the court *a quo* to put the preliminary question?

24. Is there a counsel for the defence? If so, in what form? Is there a counsel for the prosecution with the constitutional court?

Points of law in the constitutional proceedings

25. Does the withdrawal of suit before the court *a quo* or the death of a party before the same court subsequent to the decision of referral have an impact on the progress of the constitutional action?

d. The constitutional appeal (for example recours d'amparo, Verfassungsbeschwerde etc.)

Object of the constitutional appeal

26. What is the object of the constitutional appeal? Against which acts can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the constitutional court examine the facts of the case?

Allowability of the appeal

27. Who can refer an appeal to the constitutional court? How?

28. Is appeal to the constitutional court only possible once all other avenues of appeal have been tried?

Screening

29. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundedness, etc.)? What is the proportion of cases screened in this way?

Parties

30. Does the plaintiff participate in the procedure before the constitutional court? If so, in what form? What about the other parties? Can or must certain public authorities intervene in the proceedings?

24. Is there a counsel for the defence? If so, in what form? Is there a counsel for the prosecution with the constitutional court?

2. Settlement of conflicts between courts

32. Is it the task of the constitutional court to circumscribe the respective jurisdictions of the other courts? If so, how does it proceed?

II. The relations between the constitutional court and the other courts

A. The organic link

33. What are the *organic* links between the constitutional court and the other national courts (conditions of admission, appointment procedure, etc.)?

B. The procedural link

34. Are there *procedural* links between the constitutional court and the court referring the case to it or against which the appeal was lodged (for example, a judge-to-judge meeting in order to clarify or refine the question)? If so, what use is made of this option?

C. The functional link

§1 The review and its effects

35. Do the rulings of the constitutional court always constitute a binding precedent for the other courts?

36. What are the review methods of the constitutional court (annulment, dismissal, declaration of constitutionality, declaration of unconstitutionality, interpretative decisions, interpretation reserves, annulment of a judicial decision, establishment of deficiencies, establishment of limited validity, etc.)? If necessary, distinguish for the different types of referral (action for annulment, prejudicial question, constitutional appeal).

37. What are the legal *effects* of the rulings of the constitutional court (ex nunc, ex tunc; erga omnes, inter partes; etc.), individually, on the original action and on all actions before common law courts, on other regulations, administrative acts - statutory or individual - or judicial decisions, etc. (for example, is there a re-examination procedure)? Can the constitutional court limit or sustain the effects in time?

38. Is the authority of the rulings of the constitutional court always respected? Does it sometimes meet with opposition from institutions or courts? Do the other courts sometimes experience difficulties in implementing the rulings of the constitutional court?

§2 Interpretation by the constitutional court

a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction

39. Does the constitutional court consider itself bound by the interpretations of the challenged act given by the Supreme Court or other courts (theory of living law, for example)? Can the constitutional court, however, give another interpretation?

b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction

40. Is the interpretation of the constitutional rules and the legislative rules given by the constitutional court binding on the other courts? What happens in case of non-adherence to the interpretation of the constitutional court?

41. Can the constitutional court declare that a rule is constitutional only in the exact interpretation given by it? Can this interpretation deviate from that of “living law”? If so, what use is made of this option?

42. What are the effects for the other courts of a purely interpretative decision?

III. The interference of the European courts

A. The constitutional court and the other courts vis-à-vis the European Convention on Human Rights and the case law of the European Court of Human Rights

43. Is the constitutional court bound by the case law of the European Court of Human Rights? If this case law is not binding, does it influence the course of action of the constitutional court?

44. Can the court base its decision on a provision of the European Convention and, in doing so, possibly deviate from the action of the constitutional court?

45. Must a lawsuit have been brought before the constitutional court before an appeal can be made to the European Court of Human Rights (after having tried all internal avenues of appeal)?

B. The constitutional court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities

46. Is the constitutional court bound by the case law of the Court of Justice of the European Communities? If this case law is not binding, does it influence the course of action of the constitutional court?

47. Has the constitutional court already referred, or could it refer, cases to the Court of Justice of the European Communities? What is the role of the constitutional court and the other courts in case of non-application of national regulations that are incompatible with Community law?

48. Do national courts have a choice between referring cases to the constitutional court and to the Court of Justice of the European Communities?